

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

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DIVISION II
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STATE OF WASHINGTON
BY CR
DEPUTY

IN RE THE PERSONAL) NO. 35455-1-II
RESTRAINT PETITION OF) RESPONSE TO PERSONAL
CHRISTOPHER DELGADO AND) RESTRAINT PETITION
ERNESTO MEZA)

Comes now Edward G. Holm, Prosecuting Attorney
in and for Thurston County, State of Washington, by
and through James C. Powers, Deputy Prosecuting
Attorney, and files its response to this personal
restraint petition pursuant to RAP 16.9.

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

The two petitioners are currently in the
custody of the Washington Department of
Corrections. Petitioner Christopher Delgado was
convicted of one count of assault in the first
degree while armed with a deadly weapon - firearm,
and one count of kidnapping in the first degree
while armed with a deadly weapon - firearm. He
received a sentence of 171 months for first-degree

assault, including a 60-month enhancement for the firearm. He also received a sentence of 117 months for the first-degree kidnapping conviction, again including the 60-month firearm enhancement. The sentence for Count II was run consecutive to the sentence for Count I, and so the period of total confinement imposed was 288 months. See Appendix A.

Petitioner Ernesto Meza was convicted of: Count I, attempted murder in the first degree while armed with a deadly weapon - firearm; Count II, kidnapping in the first degree while armed with a deadly weapon - firearm; Count III, intimidating a witness while armed with a deadly weapon - firearm; and Count IV, intimidating a witness while armed with a deadly weapon - firearm. For Count I, a sentence of 256 months was imposed, including a 60-month firearm enhancement. For Count II, a 128-month sentence was imposed including a 60-month

firearm enhancement. For each of Counts III and IV, a 70-month sentence was imposed including a 36-month firearm enhancement. The sentence for Count II was run consecutive to the sentence for Count I. The sentences for Counts III and IV were run concurrent with each other and concurrent with Counts I and II, except that the 36-month firearm enhancements imposed for Counts III and IV were run consecutive to each other and consecutive to the sentences imposed for Counts I and II. The result was a period of total confinement for 456 months. See Appendix B.

II. STATEMENT OF PROCEEDINGS

Charges filed against Christopher Delgado in Thurston County Superior Court Cause No. 03-1-00051-9 were joined for trial with charges against Ernesto Meza in Thurston County Superior Court Cause No. 03-1-00052-7. A jury trial for both defendants was held before the Honorable Judge

Daniel Berschauer during the period of June 30, 2003 to July 3, 2003. The defendants were convicted and sentenced as set forth above.

Both defendants appealed their convictions, and those appeals were consolidated in Court of Appeals Cause No. 30662-0-II. On December 3, 2004, a Commissioner of the Court of Appeals entered a Ruling Affirming Judgments and Sentences. See Appendix H. On February 7, 2005, the Court of Appeals denied a motion to modify the Commissioner's ruling. On September 7, 2005, the Washington Supreme Court denied the defendants' petitions to review that decision. A Mandate ending both appeals was issued by the Court of Appeals on September 19, 2005.

III. RESPONSE TO ISSUES RAISED

1. Contrary to the claim of the defendants in the present petition, the defendants were charged with having been armed with a firearm at the time of each offense for which there was a conviction and, except in one instance, the jury rendered special verdicts against both defendants

specifically finding it proved beyond a reasonable doubt, as to each crime for which there was a conviction, that either the defendant or another participant in the crime was armed with a firearm at time of the commission of the offense, and in the one exception the error was harmless.

In their personal restraint petitions, defendants Delgado and Meza contend that they were only charged with having been armed with a deadly weapon at the time of each alleged offense, rather than specifically having been armed with a firearm, and that the jury only found it proved that they were armed with a deadly weapon during the commission of these offenses, rather than finding it proved specifically that they were armed with a firearm. Based on these contentions, the defendants allege that it was error for the trial court to impose firearm enhancements upon each of them at time of sentencing. The argument is that, pursuant to Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) and Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159

L.Ed.2d 403 (2004), the court committed constitutional error by imposing sentences based on facts that were not specifically found by the jury to have been proved beyond a reasonable doubt. However, these contentions are incorrect.

Defendant Meza proceeded to a jury trial on the basis of charges set forth in the Third Amended Information in Thurston County Superior Court Cause No. 03-1-00052-7. See Appendix C. As to Count I, attempted murder in the first degree, the language of the charge in that amended Information was as follows:

COUNT I: ATTEMPTED MURDER IN THE FIRST DEGREE,
WHILE ARMED WITH A DEADLY WEAPON, RCW
9A.32.030, RCW 9A.28.020(3)(a), RCW 9.94A.510,
RCW 9.94A.602:

That the defendant, ERNESTO MEZA, in the State of Washington, on or about the 9th day of January, 2003, with premeditated intent to cause the death of another person, as principal or accomplice, did attempt to kill RYAN WASLAWSKI, a human being. It is further alleged that during the commission of this offense, the defendant, or an accomplice, was armed with a deadly weapon, to wit: a firearm.

See Appendix C. In Counts II, III, and IV, identical language was used in asserting a special allegation that the defendant was armed with a firearm at the time of the commission of the offense. See Appendix C.

Defendant Delgado proceeded to trial on the basis of a Second Amended Information in Thurston County Superior Court Cause No. 03-1-00051-9. In that charging document, the crimes for which the defendant was found guilty, and for which firearm enhancements were found proved, were alleged in the following manner:

COUNT I: ASSAULT IN THE FIRST DEGREE WHILE
ARMED WITH A DEADLY WEAPON, RCW 9A.36.011, RCW
9.94A.510, RCW 9.94A.610:

That the defendant, CHRISTOPHER DELGADO, in the State of Washington, on or about the 9th day of January, 2003, as principal or accomplice, with intent to inflict great bodily harm, did assault another with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, or assaulted another and inflicted great bodily harm.

COUNT II: KIDNAPPING IN THE FIRST DEGREE WHILE
ARMED WITH A DEADLY WEAPON - FIREARM, RCW
9A.40.020(1)(b), RCW 9.94A.510, RCW 9.94A.602:

That the defendant, CHRISTOPHER DELGADO, in the State of Washington, on or about the 9th day of January, 2003, as principal or accomplice, did intentionally abduct another person with intent to facilitate the commission of any felony, to inflict bodily injury on the person, or to inflict extreme mental distress on the person or a third person. It is further alleged that during the commission of this crime the defendant or an accomplice was armed with a deadly weapon, to wit: a firearm.

See Appendix D. Thus all these charges provided notice to the defendant of an allegation that he was armed with a firearm at the time of the commission of the offense.

The trial court's instructions to the jury focused on the allegation that the defendant was armed with a firearm, rather than some other form of deadly weapon. Instruction No. 32 referred to a deadly weapon only in terms of firearms.

For purposes of a special verdict the State must prove beyond a reasonable doubt

that the defendant was armed with a deadly weapon at the time of the commission of each of the crimes charged in this case.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

If one participant to a crime is armed with a deadly weapon, all accomplices to that participant are deemed to be so armed, even if only one deadly weapon is involved.

See Appendix E. Instruction No. 33 read as follows:

The term "deadly weapon" includes any firearm, whether loaded or not.

See Appendix E.

The jury was then given special verdict forms for each of the charges against each defendant. In Cause No. 03-1-00052-7, the jury answered "Yes" on the following special verdict forms for defendant Meza:

We, the jury, return a special verdict by answering as follows:

Was the defendant, ERNESTO MEZA, armed with a firearm at the time of the commission of the crime of ATTEMPTED MURDER IN THE FIRST DEGREE?

Special Verdict Form AA. See Appendix F.

We, the jury, return a special verdict by answering as follows:

Was the defendant, ERNESTO MEZA, armed with a firearm at the time of the commission of the crime of KIDNAPPING IN THE FIRST DEGREE?

Special Verdict Form CC. See Appendix F.

We, the jury, return a special verdict by answering as follows:

Was the defendant, ERNESTO MEZA, armed with a firearm at the time of the commission of the crime of INTIMIDATING A WITNESS (WILLIAM KRAVIS)?

Special Verdict Form EE. See Appendix F.

In Cause No. 03-1-00051-9, the jury answered "Yes" on the following special verdict forms for defendant Delgado:

We, the jury, return a special verdict by answering as follows:

Was the defendant, CHRISTOPHER DELGADO, or another participant in the crime, armed with a firearm at the time of the commission of the crime of ASSAULT IN THE FIRST DEGREE?

Special Verdict Form BB. See Appendix G.

We, the jury, return a special verdict by answering as follows:

Was the defendant, CHRISTOPHER DELGADO, or another participant in the crime, armed with a firearm at the time of the commission

of the crime of KIDNAPPING IN THE FIRST DEGREE?

Special Verdict Form CC. See Appendix G.

Thus for all these charges the jury specifically found that the defendant was armed with a firearm, and so there could be no error in the court imposing a firearm enhancement. In only one instance did the special verdict fail to refer specifically to a firearm. With regard to Count III, charging defendant Meza with intimidation of a witness wherein Ryan Waslawski was the alleged victim, the jury answered "Yes" to a special verdict that read as follows:

We, the jury, return a special verdict by answering as follows:

Was the defendant, ERNESTO MEZA, armed with a deadly weapon at the time of the commission of the crime of INTIMIDATING A WITNESS (RYAN WASLAWSKI)?

Special Verdict Form DD in Cause No. 03-1-00052-7.

See Appendix F.

The State concedes that it was constitutional

error to impose a firearm enhancement for Count III in Cause 03-1-00052-7 because the phrase "deadly weapon" was used in the special verdict form, rather than "firearm", since the fact on which the enhancement was based was not explicitly found by the jury to have been proved. Apprendi, 530 U.S. at 490; Blakely, 542 U.S. at 303-304. However, the State contends that this was harmless error.

Because constitutional error is presumed prejudicial, the State has the burden of showing that the error was harmless beyond a reasonable doubt. State v. Zimmerman, 130 Wn. App. 170, 180, 121 P.3d 1216 (2005). Given the facts of this case and the overall jury instructions, it is beyond a reasonable doubt that in finding that Meza was armed with a deadly weapon when he committed intimidation of a witness against Waslawski, the jury necessarily found it proved that Meza was armed with a firearm.

In Neder v. United States, 527 U.S. 1, 119 S. Ct. 1827, 144 L.Ed.2d 35 (1999), the United States Supreme Court noted that most constitutional errors can be harmless. Only a small number of structural errors are subject to automatic reversal. Neder, 527 U.S. at 8. Such structural errors defy harmless error analysis because they deprive a defendant of basic protections without which a criminal trial cannot reliably serve as a vehicle for the determination of guilt or innocence, causing any resulting punishment to be fundamentally unfair. Neder, 527 U.S. at 8-9. The Washington Supreme Court has adopted the Neder framework for analyzing constitutional error. State v. Brown, 147 Wn.2d 330, 339-341, 58 P.3d 889 (2002).

In Washington v. Recuenco, ___ U.S. ___, 126 S.Ct. 2546, 2552, 165 L.Ed.2d 466 (2006), the United States Supreme Court held that an error such

should rule that the jury necessarily found, as to Count III in Cause 03-1-00052-7, that it was proved defendant Meza was armed with a firearm when he committed intimidation of a witness against Ryan Waslawski. Therefore, the use of the phrase "deadly weapon" rather than "firearm" in the special verdict form for Count III was harmless error.

Nevertheless, defendant Meza argues that our state constitution precludes consideration of this error as harmless. He bases this argument on the fact that the Washington appellate court has found, in some contexts, that the right to a trial by jury in the Washington State Constitution is broader than the right provided for by the Sixth Amendment to the United States Constitution. Pasco v. Mace, 98 Wn.2d 87, 99, 653 P.2d 618 (1982).

However, this argument misses the mark. The State does not dispute that the right to a jury

trial under both the state and federal constitutions required the State to prove to the jury beyond a reasonable doubt that Meza was armed with a firearm before Washington's firearm enhancement could be imposed in any of the counts charged against him. The issue here is one of harmless error, and the cases cited by defendant with regard to the Washington constitution do not address that issue.

In attacking the application of harmless error here, defendant Meza asserts that under this state's constitution a failure to obtain a jury finding beyond a reasonable doubt on every element of a crime requires automatic reversal, and therefore the same must apply with regard to the elements of a sentence enhancement. He cites in support the case of State v. Jackson, 87 Wn. App. 801, 813, 944 P.2d 403 (1997), *affirmed* 137 Wn.2d 712, 976 P.2d 1229 (1999). However, the decision

in Jackson was not based on some separate analysis of the Washington constitution. Rather, the decision was reached by reference to decisions of the United States Supreme Court interpreting the requirements of the Sixth Amendment. Jackson, 87 Wn. App. at 812-815.

In Jackson, the appellate court found, and the Washington Supreme Court affirmed, that the accomplice instruction given had relieved the State of its burden to prove that either of the two defendants had done something more than simply being present with knowledge of the criminal activity in order to be an accomplice. Under the facts of that case, it could not be said that the State had necessarily proved accomplice liability beyond a reasonable doubt. State v. Jackson, 137 Wn.2d 712, 726-727, 976 P.2d 1229 (1999).

However, in Jackson, the appellate court acknowledged what defendant Meza in the present

case disputes: that a harmless error analysis is appropriate for some omissions or misstatements in the jury instructions regarding what elements must be proved.

In some appeals that involve omissions or misstatements of elements in jury instructions, however, a harmless error analysis may be undertaken. But only if the misstatement or omission does not prevent the jury from actually considering the element. When the jury, as instructed, *necessarily* found facts that establish guilt beyond a reasonable doubt on every essential element, the actual verdict satisfies the core constitutional provisions discussed above. That is to say, the actual verdict has determined, beyond a reasonable doubt, every essential element of guilt. Under those circumstances, the court can apply harmless error analysis, and decide the effect that the erroneous instruction had on the trial.

Jackson, 87 Wn. App. at 814.

The special verdict form for Count III against defendant Mesa misstated the element to be proved for the sentence enhancement, because the allegation was clearly that he had been armed with a firearm when he committed that crime, and the

special verdict form instead referred to a "deadly weapon". That misstatement was error. However, as noted in the above quote, and contrary to the position of defendant Mesa in his present case, that does not end the matter.

When the jury found, in the special verdict form for Count III, that it had been proved beyond a reasonable doubt that Meza was armed with a deadly weapon when he committed the crime of intimidation of a witness, the jury necessarily found the actual essential element proved as well. In other words, the jury necessarily found that Meza had been armed with a firearm. There can be no doubt of this. The present case was all about Meza's use of a firearm to kidnap Waslawski, to then attempt the murder of Waslawski by shooting him, and to then use the firearm to threaten witnesses. The use of the phrase "deadly weapon" rather than "firearm" in the one special verdict

form was clearly harmless error.

2. The trial court did not commit error by imposing consecutive sentences pursuant to RCW 9.94A.589(1)(b) without a jury verdict that the crimes constituted separate and distinct criminal conduct.

Pursuant to RCW 9.94A.589(1)(b), when a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the sentences for those crimes are to be served consecutively. Defendant Meza's convictions for attempted first-degree murder and first-degree kidnapping constituted serious violent offenses. RCW 9.94A.030(40). The trial court determined that these convictions arose out of separate and distinct criminal conduct, and therefore imposed consecutive sentences. See Appendix B. Defendant Delgado's convictions for attempted first-degree assault and for kidnapping in the first degree also constituted serious violent offenses. RCW 9.94A.030(40). Similarly,

the court imposed consecutive sentences for these offenses on the basis that they were separate and distinct criminal conduct. See Appendix A.

The defendants now argue that the trial court committed error by imposing these consecutive sentences. They claim that they had a constitutional right to a jury determination that their crimes constituted separate and distinct criminal conduct before such sentences could be imposed, relying upon Apprendi v. New Jersey, supra, and Blakely v. Washington, supra.

However, in State v. Cubias, 155 Wn.2d 549, 553-555, 120 P.3d 929 (2005), the Washington Supreme Court held that the holdings in Apprendi and Blakely do not have any application to the imposition of consecutive sentences. Therefore, this claim is without merit.

3. The trial court did not abuse its discretion in finding that the serious violent offenses committed by Meza and Delgado constituted separate and distinct criminal conduct.

As noted above, the trial court determined that defendant Meza's convictions for attempted first-degree murder and for first-degree kidnapping constituted separate and distinct criminal conduct. In addition, the court found that defendant Delgado's convictions for assault in the first degree and for kidnapping in the first degree arose from separate and distinct criminal conduct.

The defendants contend that these determinations constituted an abuse of the trial court's discretion. They argue that the trial court found that each defendant's offenses did not constitute the same criminal conduct, and from that concluded the offenses were separate and distinct. The defendants further contend that crimes which do not constitute the same criminal conduct are not necessarily separate and distinct, and therefore the trial court abused its discretion by not engaging in a separate analysis to determine the

latter.

However, this argument fails to accurately state the law. Contrary to the claim of the defendants, when two crimes do not constitute the same criminal conduct, they necessarily are separate and distinct criminal conduct.

Sentencing courts are required to impose consecutive sentences when a defendant is convicted of two or more "serious violent offenses" that arise from "separate and distinct criminal conduct". RCW 9.94A.589(1)(b). Although separate and distinct criminal conduct is not statutorily defined, it is well established that when an offense does not constitute the "same criminal conduct", the offense is necessarily separate and distinct.

Cubias, 155 Wn.2d at 552. Therefore, the trial court did not abuse its discretion in imposing consecutive sentences.

4. The imposition of multiple firearm enhancements against Meza and Delgado did not constitute double jeopardy.

The double jeopardy clauses of the Fifth Amendment to the United States Constitution and of

Article I, section 9 of the Washington State Constitution protect a defendant from multiple punishments for the same criminal offense. Defendants Meza and Delgado contend that this prohibition against double jeopardy applies to the firearm enhancements imposed upon them. However, sentence enhancements do not constitute separate criminal offenses, and so protections against double jeopardy are not implicated. State v. Claborn, 95 Wn.2d 629, 637, 628 P.2d 467 (1981).

The defendants note that, pursuant to Apprendi, supra, and Blakely, supra, when a sentence enhancement is based on facts other than prior convictions, and that enhancement increases the defendant's penalty beyond the statutory maximum, the facts supporting the enhancement must be proved to a jury beyond a reasonable doubt. From that, the defendants conclude that these sentencing enhancements constitute additional

criminal offenses.

However, there is no logic to this argument. Of course, sentencing enhancements by definition increase the punishment imposed, but the punishment is still dependent upon the commission of the underlying crime. If the enhancements were separate crimes, then it would necessarily follow that one could be punished for the commission of the enhancement alone. However, that very idea is absurd because the enhancement cannot exist without the commission of the underlying offense.

However, even if constitutional double jeopardy provisions were applicable to the firearm enhancements in this case, the argument of the defendants would still fail. The Legislature has the constitutional authority to assign punishment for criminal conduct. State v. Freeman, 153 Wn.2d 765, 771-773, 108 P.3d 753 (2005). Consequently, there would be no violation of double jeopardy if

the intent of the Legislature is that multiple sentence enhancements should be imposed if separate crimes are committed while the defendant was armed with a firearm. RCW 9.94A.510 provides for the imposition of firearm enhancements. It clearly anticipates the possibility of multiple enhancements when a defendant uses a single weapon in the commission of multiple offenses, and requires that these multiple enhancements run consecutive to each other. Therefore, this statute unambiguously shows a legislative intent to impose two enhancements based on the possession of a single weapon when there are two offenses eligible for the enhancement. State v. Husted, 118 Wn. App. 92, 94-95, 74 P.3d 672 (2003).

If there was any ambiguity on this issue, it would be proper to apply the "same evidence" test, derived from Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932), to

determine legislative intent. That test asks whether the offenses are the same in law and in fact. If they are, then they may not be punished separately absent clear legislative intent to the contrary. Freeman, 153 Wn.2d at 776-777.

The firearm enhancements imposed against defendants Meza and Delgado were clearly not the same either in law or in fact. The enhancement for Meza's attempted first-degree murder conviction required proof that Meza was armed with a firearm at the time of the commission of that attempted homicide. However, proof of that would not have established that Meza was armed at the time he committed first-degree kidnapping. Therefore, these enhancements had different elements. The same applies to the enhancements imposed against Delgado. These enhancements did not violate the prohibition against double jeopardy.

5. The defendants have failed to show that a failure of the trial court to engage in a

preliminary analysis on the record regarding the admissibility of drug trafficking evidence pursuant to ER 404(b) constituted a fundamental defect which inherently resulted in a complete miscarriage of justice, and the defendants have failed to show that their counsel rendered ineffective assistance of counsel with regard to the admission of evidence concerning the involvement of Mesa and Delgado in drug trafficking.

At the trial of the present cases, Ryan Waslawski testified that he would drive Delgado around so that Delgado could sell cocaine and marijuana. Trial RP 19. He then became friends with Delgado's brother, Ernesto Meza. Trial RP 20. Waslawski stated that in November, 2002, he started selling cocaine for Meza, and continued to do this for about 5 weeks. Trial RP 21.

According to Waslawski, he eventually got tired of the drug trafficking. He chose instead to obtain legitimate employment. However, he did not tell Delgado or Meza. Instead, he simply stopped selling drugs and stayed away from both Delgado and Meza. Trial RP 23-24.

Waslawski testified that on January 9, 2003, Meza invited him to go to lunch. That afternoon, Delgado and Meza drove up. William Kravis was also in the vehicle. Trial RP 24-26. After Waslawski got into the vehicle and they drove off, Meza expressed anger toward Waslawski. Meza questioned whether Waslawski had snitched on him. When Waslawski denied this, Meza demanded to know why Waslawski had not been in contact with him. When Waslawski explained he had obtained a job, Meza responded that by failing to call and tell Meza, Waslawski had disrespected him. According to Waslawski, Meza repeatedly accused Waslawski of having disrespected him and of treating him like a "bitch". Trial RP 26-28.

Waslawski became nervous and stated he had to go to work. Meza responded that Waslawski would not be going to work that day. After that, Meza displayed a gun to Waslawski and racked the slide

back. Trial RP 29-31. It was then that Meza drove Waslawski to an isolated location, used the gun to order Waslawski down a trail, then again angrily accused Waslawski of having disrespected him, and then shot Waslawski. Trial RP 34-37.

William Kravis also testified at the trial. He stated that he had also sold cocaine for Meza and had assisted Delgado in delivering marijuana. As a result, he was able to confirm that Waslawski had been involved with Meza and Delgado in drug trafficking. Trial RP 88-91.

Kravis also confirmed that on January 9, 2003, he was in a vehicle with Meza and Delgado when they picked up Waslawski. Trial RP 91. Kravis testified that before going to Waslawski's residence they had stopped off at a store. Delgado had purchased 9 mm. ammunition and had given it to Meza. Then Meza had loaded a handgun and had put it down next to him, and they had proceeded to pick

up Waslawski. Trial RP 91-93.

According to Kravis, Meza was angry with Waslawski. Meza told Waslawski that the last meal Waslawski had eaten was the last meal he would ever have. Trial RP 95. Meza then drove to a wooded location, and directed Waslawski down a trail at gunpoint. Trial RP 97-99. Meza then shot Waslawski. Trial RP 99.

In the investigation that followed, law enforcement officers obtained a search warrant and searched the residence shared by Delgado and Meza. In a bedroom where officers found Meza's driver's license, there were two safes. Trial RP 159-162. To open one safe, officers used a combination provided by Meza and a key Meza had in his possession. In that safe was a 9 mm. semiautomatic that had fired 9 mm. cartridges found at the reported scene of the shooting. Trial RP 159, 204, 259. The other safe was opened with a key Meza

also had in his possession. In that safe was a block of cocaine weighing 175 grams and a digital scale. Trial RP 161, 172, 226-227.

In another bedroom, officers found mail addressed to Delgado at that location. Trial RP 163. In that bedroom, officers located approximately 171 grams of marijuana. Trial RP 163-164, 217. They also found a box of 9 mm. ammunition. Trial RP 163.

Evidence of a defendant's wrongful acts other than those specifically charged is not admissible to prove the character of the defendant to show that he acted in conformity with that character. However, evidence of such other wrongful acts is admissible for other relevant purposes, such as proof of intent or motive. ER 404(b). The evidence of Meza and Delgado's involvement in drug trafficking was admitted pursuant to ER 404(b).

When the State offers evidence against a

defendant under ER 404(b), the duty of the trial court is to: (1) determine whether there is a preponderance of evidence that the uncharged acts probably occurred; (2) identify the purpose for which this evidence is being admitted; (3) find the evidence materially relevant to that purpose; and (4) balance the probative value of the evidence against any unfair prejudicial effect the evidence might have. State v. Kilgore, 147 Wn.2d 288, 292, 53 P.3d 974 (2002). At the trial of the charges against Meza and Delgado, the court did not conduct this analysis on the record. Neither of the attorneys for these defendants objected to the evidence of drug trafficking or demanded that the trial court conduct the analysis outlined above.

The defendants complain that the trial court erred by not determining on the record whether there was a preponderance of evidence that the uncharged acts probably occurred. Evidentiary

errors under ER 404 are not of constitutional magnitude. State v. Thach, 126 Wn. App. 297, 311, 106 P.3d 782 (2005). Therefore, the defendants have the burden of showing that this claimed error constituted a fundamental defect which inherently resulted in a complete miscarriage of justice. In re Personal Restraint of Cook, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). A trial court's admission of evidence under ER 404 is reviewed for an abuse of discretion. Thach, 126 Wn. App. at 310. Even if the court did not conduct the necessary analysis on the record, any error is harmless if the record is sufficient to permit meaningful review and the record shows there was no abuse of discretion. State v. Barragan, 102 Wn. App. 754, 759, 9 P.3d 942 (2000); Thach, 126 Wn. App. at 311.

Here, the evidence of the drug trafficking by Meza and Delgado was admissible to show the motive for the commission of first-degree kidnapping by

Meza and Delgado, and to show both motive and intent with regard to Meza's commission of attempted first-degree murder and Delgado's commission of assault in the first degree as an accomplice. These acts were in retaliation for Waslawski's unilateral abandonment of his work for Delgado and Meza, and they intended not only to punish Waslawski by shooting him, but to also protect themselves from Waslawski acting as a snitch. As the trial court noted at the time of sentencing:

. . . When a person arms himself with a firearm, when a person takes another person out into a remote area and shoots him, there are going to be serious consequences.

. . . Drug dealing is one thing. And there are serious sanctions imposed because of drug dealing. But when drug dealing then causes this kind of behavior to protect a turf, to protect a very lucrative business, then the kind of consequences that we're discussing here automatically follow.

7-17-03 Hearing RP 38. The criminal acts of Delgado and Meza charged in this case could only be

understood within the context of the drug trafficking that led to those acts.

There was substantial evidence that drug trafficking had occurred. In addition to Waslawski's testimony, corroboration was provided by the testimony of William Kravis. Further corroboration resulted from the search of Meza and Delgado's residence. Thus, the trial court did not abuse its discretion in admitting this evidence of drug trafficking.

The defendants further contend that their trial counsel rendered ineffective assistance of counsel because they did not object to the admission of this evidence concerning drug trafficking or demand that the trial court conduct a preliminary analysis as to its admissibility. When a convicted defendant claims that his trial counsel's assistance was ineffective, he has the burden of showing that counsel's performance fell

below an objective standard of reasonableness. The appellate court must apply a strong presumption that the defendant was properly represented. In order to show deficient performance, the defendant must establish that there was no legitimate strategic or tactical reason for trial counsel's conduct. The defendant must also show prejudice by establishing a reasonable probability that, but for counsel's errors, the result of the trial would have been different. State v. Garrett, 124 Wn.2d 504, 517-519, 881 P.2d 185 (1994); State v. McFarland, 127 Wn.2d 322, 334-336, 899 P.2d 1251 (1995).

Here, the defendants have failed to show a reasonable probability that had counsel objected to the evidence of drug trafficking, or insisted on the proper analysis of admissibility, that the result at trial would have been any different. The evidence of drug trafficking explained how and why

these crimes came about, and therefore that evidence was very relevant to the charges. There is no reason to doubt that the court would have found this evidence admissible over any objection by defense counsel.

At one point in the trial, counsel for defendant Delgado sought to question Waslawski about a prior incident in which Meza had threatened Waslawski with a gun. Counsel for defendant Meza objected. Trial RP 49-50. The testimony sought by Delgado's counsel was ultimately ruled admissible by the trial court. Trial RP 67-69. This ruling was affirmed during the direct appeal of this case. See Appendix H, Ruling Affirming Judgment and Sentences at 10-11.

Although admitting the evidence, the trial court offered to defendant Meza that a limiting instruction would be given to the jury if Meza wished. Defendant Meza's counsel responded as

follows:

[THE COURT:] . . . All of those are proper limitations and I would give them if requested by Mr. Dixon.

MR. DIXON: I was anticipating that question, Your Honor. Mr. Meza declines the invitation for a limiting instruction.

Trial RP 70.

In this personal restraint petition, it is contended that this refusal of a limiting instruction constituted ineffective assistance of counsel. Although the issue is purportedly raised by both defendants, obviously it is not a claim of error that defendant Delgado can make, since the evidence was sought by his counsel on his behalf. Under the doctrine of invited error, a party to the proceeding cannot set up an error at trial and then complain about it on appellate review. State v. Pam, 101 Wn.2d 507, 511, 680 P.2d 762 (1984).

As regards the claim of error made by defendant Meza, as stated above, he has the burden

of showing that there was no legitimate strategic or tactical reason for his counsel's choice. When counsel chooses not to have the court give a limiting instruction, the presumption is that this is a tactical choice to avoid placing additional emphasis upon damaging evidence. Barragan, 102 Wn. App. at 762. Defendant Meza has done nothing to overcome that presumption.

6. The imposition of firearm enhancements as part of the sentence for defendant Meza did not exceed the applicable statutory maximum.

Defendant Meza was convicted of attempted first-degree murder, first-degree kidnapping, and two counts of intimidating a witness. See Appendix B. Attempted first-degree murder is a Class A felony, and therefore the maximum prison sentence that could be imposed for that crime was life in prison. RCW 9A.28.020(3)(a); RCW 9A.20.021(1)(a). The sentence imposed upon Meza for attempted first-degree murder was 196 months plus a 60-month

firearm enhancement for a total of 256 months. See Appendix B.

Kidnapping in the first degree is a Class A felony. RCW 9A.40.020(2). Therefore, the maximum prison sentence possible was life in prison. RCW 9A.20.021(1)(a). The court imposed a sentence for this crime in the amount of 68 months plus a 60-month firearm enhancement for a total of 128 months. See Appendix B.

Intimidating a witness is a Class B felony. RCW 9A.72.110(4). Therefore, the maximum prison sentence that could be imposed for that crime was 120 months. RCW 9A.20.021(1)(b). In this case, for each count of intimidating a witness, Meza was sentenced to 34 months plus a 36-month firearm enhancement for a total of 70 months on each of those counts. See Appendix B.

The entire sentence for a particular crime, including any sentence enhancement imposed, must

not exceed the maximum sentence enacted by the Legislature. State v. DeSantiago, 149 Wn.2d 402, 407-408, 68 P.3d 1065 (2003). Clearly, none of the sentences imposed upon defendant Meza exceeded the statutory maximums identified above.

Nevertheless, defendant Meza now contends that, pursuant to Apprendi, supra, and Blakely, supra, the applicable statutory maximum would be the top of the standard sentence range for the particular crime, and so the total sentence for that offense, including any sentence enhancement, cannot exceed that limit. That is an incorrect "apples and oranges" argument.

Pursuant to Blakely, the court can only sentence a defendant based upon facts reflected in the jury verdict or upon facts admitted by the defendant. Blakely, 542 U.S. at 303. That requirement was met here. Defendant Meza was sentenced only upon the jury's verdicts for the

offenses charged and for the sentence enhancements alleged.

The further limitation is that, even when a defendant is sentenced solely upon the verdicts of the jury, the sentence cannot exceed the ultimate limit placed on punishment for that particular offense. That requirement was also met in this case.

7. The defendants have failed to show that allowing Detective Hamilton to render an expert opinion concerning controlled substances found in the residence of the defendants constituted an inherent defect resulting in a complete miscarriage of justice.

In the trial of the charges against Meza and Delgado, Thurston County Sheriff's Detective Steve Hamilton was allowed to testify, over defense objection, as to why a person trafficking in marijuana would have a large amount of the substance together with small empty baggies and a scale in a backpack. Hamilton explained that a drug dealer would use the scale to measure out a

particular purchase, and then that purchase would be put into a separate baggie. Having all these items in a backpack would provide a dealer with a useful mobility. Trial RP 165-166.

The defendants contend the trial court erred in allowing this testimony. As noted previously, in a collateral attack alleging non-constitutional error, the defendants have the burden of showing that the claimed error constituted a fundamental defect which inherently resulted in a complete miscarriage of justice. They have not met that burden here.

The defendants contend that there was not a sufficient showing that Hamilton was qualified to render such expert testimony. The long-standing rule in Washington is that the qualifications of an expert witness are to be determined by the trial court within its discretion and rulings on such matters will not be disturbed on appeal absent a

manifest abuse of discretion. In re Detention of A.S., 138 Wn.2d 898, 917, 982 P.2d 898 (1999). Even if the reasons are fairly debatable, the court's exercise of discretion will not be reversed on appeal. State v. Austin, 57 Wn. App. 277, 284, 787 P.2d 949 (1990).

At the trial of these matters, Detective Hamilton testified to the following concerning his training and experience:

I have had much training with criminal investigations. A lot of drug training. I'm currently assigned to the Thurston County Sheriff's Office street crimes unit, which is a full-time drug team. And had lots of ongoing drug training and experience from that as well.

Trial RP 141. On this basis, the trial court did not abuse its discretion in permitting Hamilton to testify about the typical practices of a person trafficking in marijuana in order to explain to the jury the significance of certain evidence found at the residence of the defendants.

8. A letter admitted into evidence at trial was properly authenticated.

At trial, a witness named Robert Greene testified that he was acquainted with defendant Meza and had last seen Meza approximately three years earlier. Trial RP 229. Greene testified that in February, 2003, when he learned that Meza had been arrested and was in custody at the Thurston County Jail, he wrote Meza a letter. Greene then received a response to that letter. Trial RP 230.

The response indicated it was from Ernie Meza. Trial RP 231. The letter further indicated it had been sent from the Thurston County Jail. Trial RP 242. Greene had mentioned in his letter some of his own emotional difficulties in the past and the response expressed sympathy for Greene's past emotional struggles. The response also addressed a comment Greene had made in his letter concerning the justice system. Trial RP 239.

The defense objected to the admission of this letter, arguing that there had been an insufficient authentication of the evidence. However, the trial court overruled this objection. Trial RP 242. In the present petition, the defendants contend that the admission of this letter was error.

Evidence Rule 901 requires authentication or identification of a writing as a condition precedent to its admissibility. The proponent need only make a prima facie showing of authentication, presenting sufficient evidence to permit a reasonable juror to conclude that the writing is what the proponent claims it to be. State v. Payne, 117 Wn. App. 99, 108, 69 P.3d 889 (2003); State v. Rodriguez, 103 Wn. App. 693, 701-702, 14 P.3d 157 (2000). Authentication may be shown by either direct or circumstantial evidence. Rodriguez, 103 Wn. App. at 701. An appellate court reviews a trial court's decision on authenticity

for abuse of discretion. Payne, 117 Wn. App. at 110.

When there is testimony that a letter was sent, and that in due course the sender received a letter in response purporting to come from the person to whom the first letter had been sent, and the content of the response is consistent with it being in answer to matters discussed in the first letter, there is a presumption that the response is genuinely from the person it claims to be from, and no further evidence of authentication is necessary. Conner v. Zanuski, 36 Wn.2d 458, 464-465, 218 P.2d 879 (1950). All of the above particulars were satisfied in the evidence submitted in this trial to authenticate the response letter from defendant Meza. Therefore, the trial court did not abuse its discretion in admitting this letter into evidence.


IV. CONCLUSION

For the reasons set forth above, the State

asks that this personal restraint petition be denied.

RESPECTFULLY SUBMITTED this 22nd day of
January, 2007.

EDWARD G. HOLM
Prosecuting Attorney



JAMES C. POWERS/WSBA #12791
Deputy Prosecuting Attorney

APPENDIX

A

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

03 JUL 17 12:12

BETTY J. GOULD CLERK
RY DEPUTY

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

v.
CHRISTOPHER DELGADO,
Defendant.

PCN: 766741444

SID: WA21124507

DOB: 01-12-77

No.03-1-51-9

(FOR CRIMES COMMITTED ON OR AFTER 7-1-00)

JUDGMENT AND SENTENCE (JS)

☒ Prison

☐ Jail One Year or Less

☐ First-Time Offender

☐ Special Sexual Offender Sentencing Alternative

☐ Special Drug Offender Sentencing Alternative

I. HEARING

1.1 A sentencing hearing was held on July 17, 2003 and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on July 3, 2003
by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	ASSAULT IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON AND KIDNAPING IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON - 17A	9A.36.011 9.94A.510 9.94A.602	January 9, 2003
II	KIDNAPING IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON - FIREARM	9A.40.020(1)(b) 9.94A.510 9.94A.602	January 9, 2003

as charged in the SECOND AMENDED Information.

☐ The court finds that the defendant is subject to sentencing under RCW 9.94A.712.

☒ A special verdict/finding for use of **firearm** was returned on Count(s) Found II RCW 9.94A.602, .510.

☐ A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____ RCW 9.94A.602, .510.

☐ A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.835.

☐ A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic

JUDGMENT AND SENTENCE (JS) (Felony)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2002))

03-1-51-9

JASS

03-9-11707-5

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center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- ☐ A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____, RCW 9.94A.605, RCW 69.50.401(a), RCW 69.50.440.
- ☐ The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- ☐ This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☒ The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- ☐ The crime charged in Count(s) _____ involve(s) **domestic violence**.
- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 ASSAULT 2	05-24-99	LEWIS COUNTY 99-1-158-8	02-20-99	A	V
2					
3					
4					
5					

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- ☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- ☒ The Court finds that none of the above listed prior convictions constitutes same criminal conduct.
- ☒ The Court finds that the above federal and/or out of state prior convictions are properly classified under the laws of this state as a felony for purposes of criminal history and offender score.
- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	2	XII	111-147 mos	60 mos	171-207 mos	LCFE
II	0	X	51-68 mos	60 mos	111-128 mos	LCFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

☐ Additional current offense sentencing data is attached in Appendix 2.3.

2.4 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence ☐ above ☐ within ☐ below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: _____

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 ☒ The Court DISMISSES Counts _____ ☒ The defendant is found NOT GUILTY of Counts III
AS ANNOUNCED BY THE COURT ON 7-1-03.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE	\$ _____	Restitution to: _____	
RTN/RJN	\$ _____	Restitution to: _____	
	\$ _____	Restitution to: _____	(Name and Address—address may be withheld and provided confidentially to Clerk's Office).
PCV	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
CRC	\$ <u>110.00</u>	Court costs, including	RCW 9.94A.760, 9.94A.505, 10.01.160
		Criminal filing fee \$ _____	FRC
		Witness costs \$ _____	WFR
		Sheriff's service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
PUB	\$ _____	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTN	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDI/FCI	\$ _____	Drug enforcement fund of <u>THURSTON COUNTY</u>	RCW 9.94A.760
NTF/SAD/SDI	\$ _____	Crime lab fee <input type="checkbox"/> deferred due to indigency	RCW 43.43.690
CLF	\$ <u>100.00</u>	Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship	RCW 43.43.754
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	Other costs for: _____	
	\$ <u>760</u>	TOTAL	RCW 9.94A.753

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
[] shall be set by the prosecutor
[] is scheduled for _____

[] RESTITUTION. Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with..

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
-------------------------	--------------	---------------	-------------

RJN

[X] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____ . RCW 9.94A.760.

[] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760.

[X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

[X] The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.2 DNA TESTING. For anyone convicted on or after July 1, 2002, regardless of when the crime occurred, of a felony, stalking, harassment, or communicating with a minor for immoral purposes, the defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to defendant's release from confinement. RCW 43.43.754.

[] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

4.3 The defendant shall not have contact with RYAN WASCHWSKI (4-7-83) ROBERTA T. GRAHAM, JR.
WILLIAM KRAVIS (2-17-83) (name, DOB)
including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE
years (not to exceed the maximum statutory sentence).

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

- (a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

171 months on Count I * 117 months on Count II *
Actual number of months of total confinement ordered is: 288 405
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above). * EACH COUNT INCLUDES A 60 MONTH ENHANCEMENT.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: I AND II

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) **CONFINEMENT.** RCW 9.94A.712: The defendant is sentenced to the following terms of confinement in the custody of Department of Corrections:

Count _____ minimum term _____ maximum term

Count _____ minimum term _____ maximum term

Count _____ minimum term _____ maximum term

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.6 [] **COMMUNITY CUSTODY** for count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

[] **COMMUNITY PLACEMENT** is ordered as follows: Count _____ for _____ months;
Count _____ for _____ months; Count _____ for _____ months;

☒ **COMMUNITY CUSTODY** is ordered as follows:

Count I for a range from 24 to 48 months;

Count II for a range from 24 to 48 months;

Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[] The defendant shall not consume any alcohol.

☒ Defendant shall have no contact with: THOSE LISTED IN

☐ Defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ The defendant shall participate in the following crime-related treatment or counseling services: _____

☒ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☒ substance abuse ☐ mental health ☐ anger management and fully comply with all recommended treatment.

☒ The defendant shall comply with the following crime-related prohibitions: Not possess controlled substances without a valid prescription. Not associate with those who use, sell, possess, or manufacture controlled substances. Random U.A.'s at CCO direction.

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

☐ For sentences imposed under RCW 9.94A.712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven (7) working days.

4.7 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

☐ Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.


5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

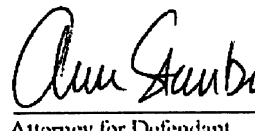
5.8 **OTHER:** Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party.

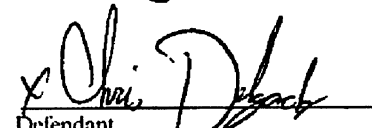
[] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

DONE in Open Court and in the presence of the defendant this date: July 17, 2003

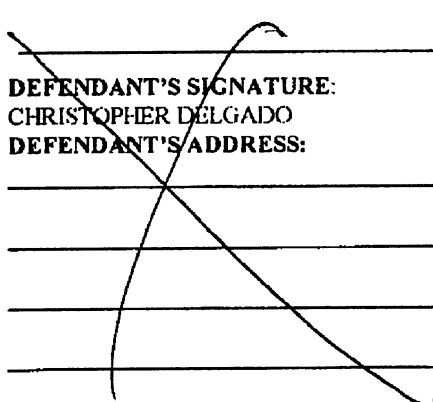

JUDGE DANIEL J. BERSCHAUER:


Senior Deputy Prosecuting Attorney
WSBA #16788
Print name: JOHN M. "JACK" JONES


Attorney for Defendant
WSBA #22596
Print name: ANN STENBERG


Defendant
CHRISTOPHER DELGADO

Interpreter signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____
_____ language, which the defendant understands. I translated this Judgment and Sentence for the
defendant into that language.


DEFENDANT'S SIGNATURE:
CHRISTOPHER DELGADO
DEFENDANT'S ADDRESS:

CAUSE NUMBER of this case: 03-1-51-9

I, _____, Clerk of this Court, certify that the foregoing
is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy
Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA21124507

(If no SID take fingerprint card for State Patrol)

Date of Birth 01-12-77

FBI No. 895477LA3

Local ID No. _____

PCN No. 766741444

Other _____

Alias name, SSN, DOB: _____

Race:

☐ Asian/Pacific Islander ☐ Black/African-American ☒ Caucasian

Ethnicity:

☐ Hispanic

Sex:

☒ Male

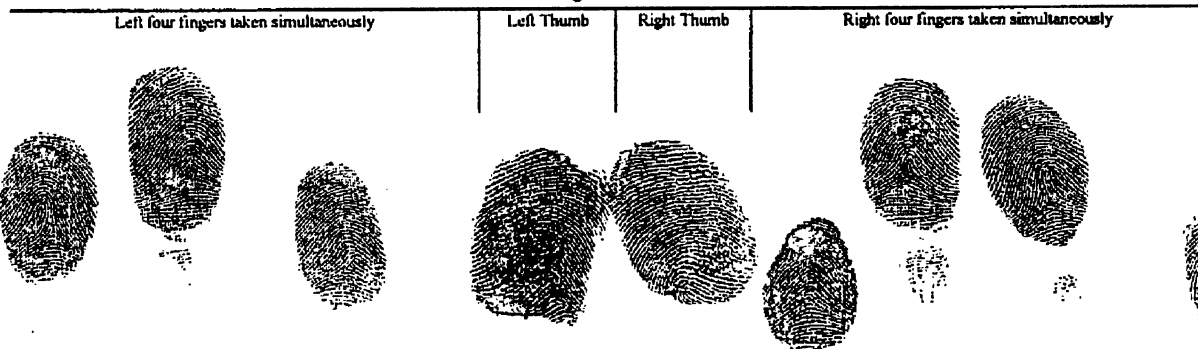
☐ Native American ☐ Other: _____

☐ Non-Hispanic

☐ Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk: [Signature] Dated: 7-17-03

DEFENDANT'S SIGNATURE: [Signature]



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON

NO. 03-1-51-9

Plaintiff,

vs.

WARRANT OF COMMITMENT ATTACHMENT
TO JUDGMENT AND SENTENCE (PRISON)

CHRISTOPHER DELGADO,

Defendant.

DOB: 01-12-77
SID: WA21124507 FBI: 895477LA3
PCN: 766741444
RACE: H
SEX: M
BOOKING NO: C0115497

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant CHRISTOPHER DELGADO has been convicted in the Superior Court of the State of Washington for the crime(s) of: ASSAULT IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON AND KIDNAPING IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

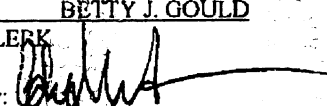
YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

DANIEL J. BERSCHAUER

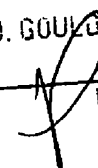
BETTY J. GOULD
CLERK

By: 
DEPUTY CLERK

APPENDIX B

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

03 JUL 17 P12:12

BETTY J. GOULD CLERK
HY  DEPUTY

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

v.
ERNESTO MEZA,
Defendant.

PCN: 766741452
SID: WA21124507
DOB: 07-25-71

No.03-1-52-7

(FOR CRIMES COMMITTED ON OR AFTER 7-1-00)

JUDGMENT AND SENTENCE (JS)

- ☒ Prison
☐ Jail One Year or Less
☐ First-Time Offender
☐ Special Sexual Offender Sentencing Alternative
☐ Special Drug Offender Sentencing Alternative

I. HEARING

- 1.1 A sentencing hearing was held on July 17, 2003 and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on July 3, 2003
by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	ATTEMPTED MURDER IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON - FIREARM	9A.28.020(3)(a) 9.94A.510 9.94A.602	January 9, 2003
II	KIDNAPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON - FIREARM	9A.40.020(1)(b)(c)(d) 9.94A.510 9.94A.602	January 9, 2003
III	INTIMIDATING A WITNESS, WHILE ARMED WITH A DEADLY WEAPON - FIREARM	9A.72.110(1)(d) 9.94A.510 9.94A.602	January 9, 2003
IV	INTIMIDATING A WITNESS, WHILE ARMED WITH A DEADLY WEAPON - FIREARM	9A.72.110(1)(d) 9.94A.510 9.94A.602	January 9, 2003

as charged in the THIRD AMENDED Information.

- ☐ The court finds that the defendant is subject to sentencing under RCW 9.94A.712
☒ A special verdict/finding for use of **firearm** was returned on Count(s) I, II, III & IV. RCW 9.94A.602, .510.
☐ A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____. RCW 9.94A.602, .510.
☐ A special verdict/finding of **sexual motivation** was returned on Count(s) _____. RCW 9.94A.835.
☐ A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) _____. RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic

JUDGMENT AND SENTENCE (JS) (Felony) 03-1-52-7
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2002))

03-9-11706-7

page 1

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COPY TO DOC JASS

center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- ☐ A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____, RCW 9.94A.605, RCW 69.50.401(a), RCW 69.50.440.
- ☐ The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- ☐ This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☒ The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- ☐ The crime charged in Count(s) _____ involve(s) **domestic violence**.
- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult Juv.	TYPE OF CRIME
1	N/A				
2					
3					
4					
5					

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- ☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- ☒ The Court finds that none of the above listed prior convictions constitutes same criminal conduct.
- ☒ The Court finds that the above federal and/or out of state prior convictions are properly classified under the laws of this state as a felony for purposes of criminal history and offender score.
- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	2	XV	192.75-260.25	60 mos.	252.75-320.25	LIFE
II	0	X	51.-68 mos.	60 mos	111.-128 mos	LIFE
III	3	VI	26-34 mos.	36 mos	62-70 mos	10 yrs
IV	3	VI	26-34 mos.	36 mos	62-70 mos.	10 yrs

- * (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

☐ Additional current offense sentencing data is attached in Appendix 2.3.

2.4 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence ☐ above ☐ within ☐ below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: _____

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 ☐ The Court DISMISSES Counts _____ ☐ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE	\$ _____	Restitution to: _____
RTN/RJN	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
		(Name and Address—address may be withheld and provided confidentially to Clerk's Office).
PCV	\$ 500.00	Victim assessment RCW 7.68.035
CRC	\$ 110.00	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160
		Criminal filing fee \$ _____ FRC
		Witness costs \$ _____ WFR
		Sheriff service fees \$ _____ SFR/SFS/SFW/WRF
		Jury demand fee \$ _____ JFR
		Extradition costs \$ _____ EXT
		Other \$ _____
PUB	\$ _____	Fees for court appointed attorney RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs RCW 9.94A.760
FCM/MTH	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430
CDF/LDI/PCD	\$ _____	Drug enforcement fund of THURSTON COUNTY RCW 9.94A.760
NTF/SAD/SDI	\$ _____	Crime lab fee <input type="checkbox"/> deferred due to indigency RCW 43.43.690
CLF	\$ 100.00	Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship RCW 43.43.754
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430
	\$ 710	Other costs for: _____

\$ _____ TOTAL

RCW 9.94A.753

☐ The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
☐ shall be set by the prosecutor
☐ is scheduled for _____

☐ RESTITUTION. Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:..

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
-------------------------	--------------	---------------	-------------

RJN

☒ The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602.

☒ All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.760.

☐ In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760.

☒ The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

☒ The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.2 DNA TESTING. For anyone convicted on or after July 1, 2002, regardless of when the crime occurred, of a felony, stalking, harassment, or communicating with a minor for immoral purposes, the defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to defendant's release from confinement. RCW 43.43.754.

☐ HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

4.3 The defendant shall not have contact with WILLIAM KRAVIS (2-17-83) ROBERT GREENWALD JR.
RYAN WISLANSKI (4-7-83) (name, DOB)
including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE
years (not to exceed the maximum statutory sentence).

☐ Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: THE FIREARM IN EVIDENCE IN THIS CASE IS HEREBY
FORFEITED.

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

- (a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

256 months on Count I * 70 months on Count IV **
128 months on Count II * _____ months on Count _____
70 months on Count III ** _____ months on Count _____

Actual number of months of total confinement ordered is: 456 705
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above). * THESE COUNTS INCLUDE A 60 MONTH ENHANCEMENT ON EACH COUNT.
* * THESE COUNTS INCLUDE A 36 MONTH ENHANCEMENT ON EACH COUNT.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: I AND II

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) **CONFINEMENT.** RCW 9.94A.712: The defendant is sentenced to the following terms of confinement in the custody of Department of Corrections:

Count _____ minimum term _____ maximum term
Count _____ minimum term _____ maximum term
Count _____ minimum term _____ maximum term

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.6 [] **COMMUNITY CUSTODY** for count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

[] **COMMUNITY PLACEMENT** is ordered as follows: Count _____ for _____ months;
Count _____ for _____ months; Count _____ for _____ months;

[X] **COMMUNITY CUSTODY** is ordered as follows:

Count I for a range from 24 to 48 months;
Count II for a range from 24 to 48 months;
Count III + IV for a range from 9 to 18 months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community

placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☒ Defendant shall have no contact with: THOSE LISTED IN RF 4.5

☐ Defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ The defendant shall participate in the following crime-related treatment or counseling services: _____

☒ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☒ substance abuse ☐ mental health ☐ anger management and fully comply with all recommended treatment.

☒ The defendant shall comply with the following crime-related prohibitions: Not possess controlled substances without a valid prescription. Not associate with those who use, sell, possess, or manufacture controlled substances. Random U.A.'s at CCO direction.

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

☐ For sentences imposed under RCW 9.94A.712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven (7) working days.

4.7 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**


☐ Defendant waives any right to be present at any restitution hearing (sign initials): _____

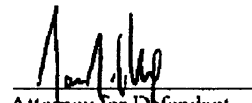
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.
- 5.8 **OTHER:** Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party.

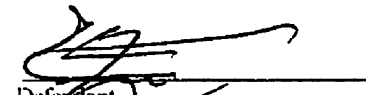
☐ The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

DONE in Open Court and in the presence of the defendant this date: July 17, 2003.


JUDGE DANIEL J. BERSCHAUER:


Senior Deputy Prosecuting Attorney
WSBA #16786
Print name: JOHN M. "JACK" JONES


Attorney for Defendant
WSBA #20257
Print name: JAMES J. DIXON


Defendant
ERNESTO MEZA

Interpreter signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____
language, which the defendant understands. I translated this Judgment and Sentence for the
defendant into that language.


DEFENDANT'S SIGNATURE:
ERNESTO MEZA
DEFENDANT'S ADDRESS:

CAUSE NUMBER of this case: 03-1-52-7

I, _____, Clerk of this Court, certify that the foregoing
is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy
Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA21124507

(If no SID take fingerprint card for State Patrol)

Date of Birth 07-25-71

FBI No. 895477LA3

Local ID No. _____

PCN No. 766741452

Other _____

Alias name, SSN, DOB: _____

Race:

☐ Asian/Pacific Islander ☐ Black/African-American ☒ Caucasian

Ethnicity:

☐ Hispanic

Sex:

☒ Male

☐ Native American

☐ Other: _____

☐ Non-Hispanic

☐ Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto. Clerk of the Court: [Signature] Dated: 2-17-07

DEFENDANT'S SIGNATURE: [Signature]

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON

NO. 03-1-52-7

Plaintiff,

vs.

WARRANT OF COMMITMENT ATTACHMENT
TO JUDGMENT AND SENTENCE (PRISON)

ERNESTO MEZA,

Defendant.

DOB: 07-25-71
SID: WA21124507 FBI: 895477LA3
PCN: 766741452
RACE: W
SEX: M
BOOKING NO: C0115498

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant ERNESTO MEZA has been convicted in the Superior Court of the State of Washington for the crime(s) of: ATTEMPTED MURDER IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON, KIDNAPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON - FIREARM, INTIMIDATING A WITNESS, WHILE ARMED WITH A DEADLY WEAPON - 2 COUNTS

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

DANIEL J. BERSCHAUER

STATE OF WASHINGTON
County of Thurston
I, Betty J. Gould, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County holding session at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing 9 pages,
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court.
DATED: January 22, 2007
BETTY J. GOULD
County Clerk, Thurston County, State of Washington
by [Signature] Deputy

BETTY J. GOULD

CLERK

By: [Signature]
DEPUTY CLERK

APPENDIX C

FILED
SUPERIOR COURT
THURSTON COUNTY WASH.

03 JUN 30 P4 52

RECEIVED J. GOULD CLERK
BY **ORIGINAL** DEPUTY

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE OF WASHINGTON,

Plaintiff,

vs.

ERNESTO MEZA
W,M,5'4,230,BLK,BRN
DOB: 07-25-71
SID: WA21124507 FBI: 0895477LA3
PCN:
107 Carlisle Lane
Onalaska, WA 98570
BOOKING NO. C0115498

Defendant.

NO. 03-1-52-7

**THIRD AMENDED
INFORMATION**

JOHN M. "JACK" JONES
Senior Deputy Prosecuting Attorney

CO-DEFENDANT:
CHRISTOPHER DELGADO
NO. 03-1-0051-9

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

COUNT I: ATTEMPTED MURDER IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON, RCW 9A.32.030, RCW 9A.28.020(3)(a), RCW 9.94A.510, RCW 9.94A.602:

That the defendant, ERNESTO MEZA, in the State of Washington, on or about the 9th day of January, 2003, with premeditated intent to cause the death of another person, as principal or accomplice, did attempt to kill RYAN WASLAWSKI, a human being. It is further alleged that during the commission of this offense, the defendant, or an accomplice, was armed with a deadly weapon, to-wit: a firearm.

OR IN THE ALTERNATIVE

COUNT I: ASSAULT IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON, RCW 9A.36.011, RCW 9.94A.510, RCW 9.94A.610:

That the defendant, ERNESTO MEZA, in the State of Washington, on or about the 9th day of January, 2003, as principal or accomplice, with intent to inflict great bodily harm, did assault another with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, or assaulted another and inflicted great bodily harm.

COUNT II: KIDNAPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON - FIREARM, RCW 9A.40.020(1)(b)(c)(d), RCW 9.94A.510, RCW 9.94A.602:

That the defendant, ERNESTO MEZA, in the State of Washington, on or about the 9th day of January, 2003, as principal or accomplice, did intentionally abduct another person with intent to facilitate the commission

THIRD AMENDED INFORMATION

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

1 of any felony, to inflict bodily injury on the person, or to inflict extreme mental distress on the person or a
2 third person. It is further alleged that during the commission of this crime the defendant or an accomplice
was armed with a deadly weapon, to-wit: a firearm.


3 COUNT III: INTIMIDATING A WITNESS, WHILE ARMED WITH A DEADLY WEAPON - FIREARM,
4 RCW9A.72.110(1)(d), RCW 9.94A.510, RCW 9.94A.602:

5 That the defendant, ERNESTO MEZA, in the State of Washington, on or about the 9th day of January, 2003,
6 did by use of a threat against a current or prospective witness, attempt to induce that witness not to report
the information relevant to a potential criminal investigation, to-wit: Ryan Waslawski. It is further alleged
7 that during the commission of this crime the defendant or an accomplice was armed with a deadly weapon,
to-wit: a firearm.

8 COUNT IV: INTIMIDATING A WITNESS, WHILE ARMED WITH A DEADLY WEAPON -
9 FIREARM, RCW9A.72.110(1)(d), RCW 9.94A.510, RCW 9.94A.602:

10 That the defendant, ERNESTO MEZA, in the State of Washington, on or about the 9th day of January, 2003,
11 did by use of a threat against a current or prospective witness, attempt to induce that witness not to report
the information relevant to a potential criminal investigation, to-wit: William Kravis. It is further alleged
that during the commission of this crime the defendant or an accomplice was armed with a deadly weapon,
to-wit: a firearm.

12 DATED this 30th day of June, 2003.

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14 
15 JOHN M. "NACK" JONES, WSBA#16786
16 Senior Deputy Prosecuting Attorney
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CLERK OF WASHINGTON
County Clerk and Ex-officio Clerk of the
County of Thurston, State of Washington
do hereby certify that the foregoing
is a true and correct copy of the original
as the same appears on file in my office.
IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of said court
DATED: 1-19-07
ELITY J. COULD
County Clerk, Thurston County, State of Washington
by [Signature] Deputy

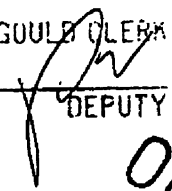
THIRD AMENDED INFORMATION

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

APPENDIX D

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

103 JUN 30 P4 52

BETTY J. GOULE CLERK
BY  DEPUTY

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE OF WASHINGTON,

Plaintiff,

vs.

CHRISTOPHER DELGADO

H,M,5'3,175,BLK,BRN

DOB: 01-12-77

SID: WA21124507 FBI: 895477LA3

PCN: 766741444

107 Carlisle Lane

Onalaska, WA 98570

BOOKING NO. C0115493/C0115495

Defendant.

NO. 03-1-51-9

**SECOND AMENDED
INFORMATION**

JOHN M. "JACK" JONES

Senior Deputy Prosecuting Attorney

CO-DEFENDANT:

ERNESTO MEZA

NO. 03-1-0052-7

ORIGINAL

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

COUNT I: ATTEMPTED MURDER IN THE FIRST DEGREE, WHILE ARMED WITH A DEADLY WEAPON, RCW 9A.32.030, RCW 9A.28.020(3)(a), RCW 9.94A.510, RCW 9.94A.602:

That the defendant, CHRISTOPHER DELGADO, in the State of Washington, on or about the 9th day of January, 2003, with premeditated intent to cause the death of another person, as principal or accomplice, did attempt to kill RYAN WASLAWSKI, a human being. It is further alleged that during the commission of this offense, the defendant, or an accomplice, was armed with a deadly weapon, to-wit: a firearm.

OR IN THE ALTERNATIVE

COUNT I: ASSAULT IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON, RCW 9A.36.011, RCW 9.94A.510, RCW 9.94A.610:

That the defendant, CHRISTOPHER DELGADO, in the State of Washington, on or about the 9th day of January, 2003, as principal or accomplice, with intent to inflict great bodily harm, did assault another with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, or assaulted another and inflicted great bodily harm.

COUNT II: KIDNAPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON - FIREARM, RCW 9A.40.020(1)(b), RCW 9.94A.510, RCW 9.94A.602:

That the defendant, CHRISTOPHER DELGADO, in the State of Washington, on or about the 9th day of January, 2003, as principal or accomplice, did intentionally abduct another person with intent to facilitate

SECOND AMENDED INFORMATION

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

1 the commission of any felony, to inflict bodily injury on the person, or to inflict extreme mental distress on
2 the person or a third person. It is further alleged that during the commission of this crime the defendant or
an accomplice was armed with a deadly weapon, to-wit: a firearm.

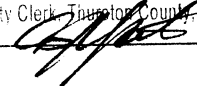
3 COUNT III: RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, WHILE ARMED WITH
4 A DEADLY WEAPON, FIREARM., RCW 9A76.070, RCW 9.94A.510, RCW 9.94A.602:

5 That the defendant, CHRISTOPHER DELGADO, in the State of Washington, on or about the 9th day of
6 January, 2003, did, with intent to hinder, prevent, or delay the apprehension or prosecution of another, to
7 wit: Ernesto Meza, who he knows is being sought by law enforcement officials for commission of a Class
A felony, harbor or concealed said person, or provided such person with money, transportation, disguise,
or other means of avoiding discovery or apprehension. It is further alleged that during the commission of
this crime the defendant or an accomplice was armed with a deadly weapon, to-wit: a firearm.

8
9 DATED this 30 ^{JUNE} day of ~~May~~, 2003.

10
11
12 
13 JOHN M. "JACK" JONES, WSBA#16786
14 Senior Deputy Prosecuting Attorney

15
16
17
18
19 I, _____, County Clerk and Ex-officio Clerk of the
20 Superior Court of the State of Washington, for Thurston County
do hereby certify that the foregoing
21 is a true and correct copy of the original same appears on
filed and recorded in the case containing 2 pages,
IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of said court

22 DATED: 1-19-07
23 BETTY J GOULD
24 County Clerk, Thurston County, State of Washington
25 by  Deputy
26

SECOND AMENDED INFORMATION

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

APPENDIX E

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

03 JUL -3 PM 12: 52
BETTY J. GOULD, CLERK

BY 39
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

vs.

CHRISTOPHER DELGADO
ERNESTO MEZA,

Defendant.

NO. 03-1-51-9/03-1-52-7

COURT'S INSTRUCTIONS TO THE JURY

DATED this 2 day of ^{July}~~June~~, 2003.

Dan Brennan
JUDGE

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It is also your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by a prosecuting attorney, by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given to the testimony of each. In considering the testimony of any witness, you may take into

account the opportunity and ability of the witness to observe, the witness's memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 2

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to any other defendant.

All of the instructions apply to each defendant unless a specific instruction states that it applies only to a specific defendant.

INSTRUCTION NO. 3

A separate crime is charged in each count. You must decide each count separately.

Your verdict on one count should not control your verdict on any other count.

INSTRUCTION NO. 4

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 5

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 6

You may give such weight and credibility to any alleged out-of-court statements of the defendant as you see fit, taking into consideration the surrounding circumstances.

INSTRUCTION NO. 7

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION NO. 8

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 9

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime, if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person is an accomplice.

INSTRUCTION NO. 10

A person commits the crime of murder in the first degree when, with a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person.

INSTRUCTION NO. 11

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. The killing need not follow immediately. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

INSTRUCTION NO. 12

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 13

A person commits the crime of attempted Murder in the First Degree when, with intent to commit that crime, he or she does any act which is a substantial step toward the commission of that crime.

INSTRUCTION NO. 14

To convict the defendant, ERNESTO MEZA, of the crime of attempted Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 9th day of January, 2003 the defendant did an act which was a substantial step toward the commission of Murder in the First Degree;
- (2) That the act was done with the intent to commit Murder in the First Degree; and
- (3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 15

To convict the defendant, CHRISTOPHER DELGADO, of the crime of attempted Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 9th day of January, 2003, the defendant or an accomplice did an act which was a substantial step toward the commission of Murder in the First Degree;

(2) That the act was done with the intent to commit Murder in the First Degree; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

A person commits the crime of Assault in the First Degree when, with intent to inflict great bodily harm, he or she assaults another and inflicts great bodily harm or assaults another with a firearm or by any force or means likely to produce great bodily harm or death.

INSTRUCTION NO. 17

An assault is an intentional touching or striking or cutting or shooting of another person that is harmful or offensive. A touching or striking or cutting or shooting is offensive, if the touching or striking or cutting or shooting would offend an ordinary person who is not unduly sensitive.

An assault is an act, with unlawful force, done with intent to inflict bodily injury upon another, tending, but failing to accomplish it, and accompanied with the apparent present ability to inflict the bodily injury if not prevented.

An assault is an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury.

INSTRUCTION NO. 18

Great bodily harm means bodily injury that creates a probability of death, or which causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

INSTRUCTION NO. 19

To convict the defendant, ERNESTO MEZA, of the crime of Assault in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 9th day of January, 2003, the defendant assaulted Ryan Waslawski;
- (2) That the defendant ~~acted~~ acted with intent to inflict great bodily harm;
- (3) That the assault
 - (a) was committed with a firearm; or
 - (b) resulted in the infliction of great bodily harm; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2) and (4), and either element (3)(a) or element (3)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. Elements (3)(a) and (3)(b) are alternatives and only one need be proved.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 20

To convict the defendant, CHRISTOPHER DELGADO, of the crime of Assault in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 9th day of January, 2003, the defendant or an accomplice, assaulted Ryan Waslawski;

(2) That the defendant ^{OR AN ACCOMPLICE} acted with intent to inflict great bodily harm;

(3) That the assault

(a) was committed with a firearm; or

(b) resulted in the infliction of great bodily harm; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2) and (4), and either element (3)(a) or element (3)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. Elements (3)(a) and (3)(b) are alternatives and only one need be proved.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

A person commits the crime of Kidnaping in the First Degree when he or she intentionally abducts another person with intent to facilitate the commission of Murder in the First Degree (or an attempt to commit said crime) or Assault in the First Degree; or to inflict bodily injury on the person; or to inflict extreme mental distress on that person or on a third person.

INSTRUCTION NO. 22

Abduct means to restrain a person by using or threatening to use deadly force.

INSTRUCTION NO. 23

Restraint or restrain means to restrict another person's movements without consent and without legal authority in a manner which interferes substantially with that person's liberty. Restraint is without consent if it is accomplished by physical force or intimidation.

INSTRUCTION NO. 24

Bodily injury, physical injury or bodily harm means physical pain or injury, illness, or an impairment of physical condition.

INSTRUCTION NO. 25

To convict the defendant, ERNESTO MEZA, of the crime of Kidnaping in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 9th day of January, 2003, the defendant intentionally abducted another person;
- (2) That the defendant abducted that person with intent to:
 - (a) facilitate the commission of Murder in the First Degree (or Attempted Murder in the First Degree); or Assault in the First Degree; or
 - (b) inflict bodily injury on the person; or
 - (c) inflict extreme mental distress on the person or a third person; and
- (3) That the acts occurred in the State of Washington.

If you find from the evidence that elements (1) and (3), and either element (2)(a), (2)(b) or element (2)(c) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. Elements (2)(a), (2)(b) and (2)(c) are alternatives and only one need be proved.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 26

To convict the defendant, CHRISTOPHER DELGADO, of the crime of Kidnaping in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 9th day of January, 2003, the defendant or an accomplice intentionally abducted another person;

(2) That the defendant or an accomplice abducted that person with intent to:

- (a) facilitate the commission of Murder in the First Degree (or Attempted Murder in the First Degree); or Assault in the First Degree; or
- (b) inflict bodily injury on the person; or
- (c) inflict extreme mental distress on the person or a third person; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that elements (1) and (3), and either element (2)(a), (2)(b) or element (2)(c) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. Elements (2)(a), (2)(b) and (2)(c) are alternatives and only one need be proved.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 27

A person commits the crime of Intimidating a Witness when he or she, by use of a threat against a current or prospective witness, attempts to induce that person not to report the information relevant to a criminal investigation.

INSTRUCTION NO. 28

Threat means to communicate, directly or indirectly, the intent to cause bodily injury immediately or in the future to the person threatened or to any other person.

INSTRUCTION NO. 29

“Current or prospective witness” means a person endorsed as a witness in an official proceeding, or a person whom the defendant believed might be called as a witness in any official proceeding, or a person whom the defendant had reason to believe might have information relevant to a criminal investigation.

INSTRUCTION NO. 30

To convict the defendant, ERNESTO MEZA, of the crime of Intimidating a Witness, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 9th day of January, 2003, the defendant by use of a threat against a current or prospective witness Ryan Waslawski, attempted to induce that person not to report the information relevant to a criminal investigation; and

(2) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict or not guilty.

INSTRUCTION NO. 31

To convict the defendant, ERNESTO MEZA, of the crime of Intimidating a Witness, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 9th day of January, 2003, the defendant by use of a threat against a current or prospective witness William Kravis, attempted to induce that person not to report the information relevant to a criminal investigation; and

(2) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict or not guilty.

INSTRUCTION NO. 32

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of each of the crimes charged in this case.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

If one participant to a crime is armed with a deadly weapon, all accomplices to that participant are deemed to be so armed, even if only one deadly weapon is involved.

INSTRUCTION NO. 33

The term "deadly weapon" includes any firearm, whether loaded or not.

INSTRUCTION NO. 34

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you have considered the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 35

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these ~~four~~^{three} instructions, and ~~four~~^{three} verdict forms, A, B, C, ~~and D~~, for defendant Delgado and five verdict forms, A, B, C, D, and E, for defendant Meza.

When completing the verdict forms, you will first consider the crime of Attempted Murder in the First Degree as charged in Count I. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form A.

As to each defendant if you find the defendant guilty on Verdict Form A, do not use Verdict Form B. If you find the defendant not guilty of the crime of Attempted Murder in the First Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the alternative crime of Assault in the First Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form B the words "not guilty" or the word "guilty," according to the decision you reach.

You will next consider the remaining crimes charged against each defendant. You must fill in the blanks provided on the Verdict Forms the words "not guilty" or the word "guilty," according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict.

When all of you have so agreed, fill in the proper form of verdict or verdicts, to express your decision. The presiding juror will sign it and notify the bailiff who will conduct you into court to declare your verdict.

INSTRUCTION NO. 36

You will also be furnished with a special verdict form for each count. If you find the defendant not guilty, do not use the special verdict form for that count. If you find the defendant guilty, you will then use the special verdict form for that count and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict form "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no".

STATE OF WASHINGTON
County of Thurston
I, Betty J. Gould, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County holding session at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing 39 pages,
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court
DATED: 1-19-07
BETTY J. GOULD
County Clerk, Thurston County, State of Washington
by [Signature] Deputy

APPENDIX F

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON -3 PM 12:49
IN AND FOR THE COUNTY OF THURSTON

BETTY J. GOULD, CLERK

BY _____
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ERNESTO MEZA,

Defendant.

NO. 03-1-52-7

SPECIAL VERDICT FORM AA

We, the jury, return a special verdict by answering as follows:

Was the defendant, ERNESTO MEZA, armed with a firearm at the time of
the commission of the crime of ATTEMPTED MURDER IN THE FIRST DEGREE?

ANSWER: Yes
(Yes or No)


PRESIDING JUROR

STATE OF WASHINGTON
County of Thurston

I, Betty J. Gould, County Clerk and Ex-officio Clerk of the
Superior Court of the State of Washington, for Thurston County,
holding session at Olympia, do hereby certify that the foregoing
is a true and correct copy of the original of the Special Verdict Form
filed and entered in the Superior Court of the State of Washington,
Thurston County, on this 19th day of January, 2007.

DATED:

1-19-07



FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

NO. 03-1-52-7
BETTY J. GOULD, CLERK

BY _____
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ERNESTO MEZA,

Defendant.


NO. 03-1-52-7

SPECIAL VERDICT FORM CC

We, the jury, return a special verdict by answering as follows:

Was the defendant, ERNESTO MEZA, armed with a firearm at the time of
the commission of the crime of KIDNAPING IN THE FIRST DEGREE?

ANSWER: Yes
(Yes or No)


PRESIDING JUROR

STATE OF WASHINGTON

County of Thurston

I, Betty J. Gould, County Clerk and Ex-officio Clerk of the
Superior Court of the State of Washington for Thurston County,
do hereby certify that the foregoing is a true and correct
copy of the Special Verdict Form CC filed in Case No. 03-1-52-7
and that the same has been filed in the County Clerk's Office
and the same is a true and correct copy of the Special Verdict
Form CC filed in Case No. 03-1-52-7.

1-19-07



FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

03 JUL -3 PM 12:49

BETTY J. GOULD, CLERK

BY _____
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ERNESTO MEZA,

Defendant.

NO. 03-1-52-7

SPECIAL VERDICT FORM DD

We, the jury, return a special verdict by answering as follows:

Was the defendant, ERNESTO MEZA, armed with a deadly weapon at the
time of the commission of the crime of INTIMIDATING A WITNESS, (RYAN
WASLAWSKI)?

ANSWER: Yes
(Yes or No)


PRESIDING JUROR

1-19-07



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

03 JUL -3 PM 12:49
BETTY J. GOULD, CLERK

BY _____ DEPUTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ERNESTO MEZA,

Defendant.

NO. 03-1-52-7

SPECIAL VERDICT FORM EE

We, the jury, return a special verdict by answering as follows:

Was the defendant, ERNESTO MEZA, armed with a firearm at the time of
the commission of the crime of INTIMIDATING A WITNESS (WILLIAM KRAVIS)?

ANSWER: Yes
(Yes or No)


PRESIDING JUROR

STATE OF WASHINGTON

County of Thurston
I, Betty J. Gould, County Clerk for Thurston County, Washington, do hereby certify that the within and foregoing is a true and correct copy of the original filed in my office on July 3, 2003.
Witness my hand and the seal of said County at Thurston, Washington, this 3rd day of July, 2003.
Betty J. Gould, County Clerk
1-19-07
Bjg/ab

APPENDIX

G

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

03 JUL -3 PM 12:49

BETTY J. GOULD, CLERK

BY _____
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

vs.

CHRISTOPHER DELGADO,

Defendant.

NO. 03-1-51-9

SPECIAL VERDICT FORM BB


We, the jury, return a special verdict by answering as follows:

Was the defendant, CHRISTOPHER DELGADO, or another participant in
the crime, armed with a firearm at the time of the commission of the crime of ASSAULT IN
THE FIRST DEGREE?

ANSWER: Yes
(Yes or No)


PRESIDING JUROR

STATE OF WASHINGTON
County of Thurston
I, Betty J. Gould, County Clerk and Ex-officio Clerk of the
Superior Court of the State of Washington, do hereby
holding session of said court, do hereby certify that this
is a true and correct copy of the original
file and of record in my State Court. 1
IN WITNESS WHEREOF, I have hereunto set my hand
affixed the seal of said court

DATED: 1-19-07
BETTY J. GOULD
County Clerk, Thurston County, State of Washington
by  Deputy

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

JUL -3 PM 12:49

BETTY J. GOULD, CLERK

BY _____
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

vs.

CHRISTOPHER DELGADO,

Defendant.

NO. 03-1-51-9

SPECIAL VERDICT FORM CC

We, the jury, return a special verdict by answering as follows:

Was the defendant, CHRISTOPHER DELGADO, or another participant in
the crime, armed with a firearm at the time of the commission of the crime of KIDNAPING
IN THE FIRST DEGREE?

ANSWER: Yes
(Yes or No)


PRESIDING JUROR

STATE OF WASHINGTON

County of Thurston

I, Betty J. Gould, County Clerk and Ex officio Clerk of the
Superior Court of the State of Washington for Thurston County
having received from the jury a special verdict in the foregoing
case and certified that the same is a true and correct copy of the
original and the same contains 1 page, to wit:
IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of said court.

DATE: 1-19-07

BETTY J. GOULD

County Clerk, Thurston County, State of Washington

by  Deputy

APPENDIX H

COPY RECEIVED
THURSTON COUNTY
PROSECUTING ATTORNEY

DEC 06 2004

BY aw
TIME 9:55am

FILED
COURT OF APPEALS
DIVISION II

04 DEC -3 AM 9:52

STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER DELGADO and
ERNESTO MEZA,

Appellants.

Consol. Nos. 30662-0-II
31710-3-II

RULING AFFIRMING
JUDGMENTS AND
SENTENCES

A jury convicted Christopher Delgado of assault in the first degree and of kidnapping in the first degree, both with firearm enhancements, and convicted Ernesto Meza of attempted murder in the first degree, kidnapping in the first degree and two counts of intimidating a witness, all with firearm enhancements. Delgado appeals, arguing that: (1) the amendment of his information violated his right to a speedy trial; (2) his convictions for both assault and kidnapping violate his right against double jeopardy; (3) the firearm enhancement jury instructions were deficient; and (4) he was denied effective assistance of counsel. Meza appeals, arguing that: (1) the evidence was insufficient to prove he committed kidnapping; (2) his attempted murder and kidnapping convictions should have

been treated as parts of the same criminal conduct; (3) the firearm enhancement jury instructions were deficient; (4) the court erred in allowing testimony about his prior threats; and (5) the court erred in allowing amendments of his information. Meza also filed a statement of additional grounds, claiming that: (1) the evidence was insufficient to prove he committed attempted murder; (2) the State engaged in prosecutorial misconduct; and (3) the consecutive firearm sentencing enhancements violate his right against double jeopardy. The State filed a motion on the merits under RAP 18.14. Concluding that Delgado's and Meza's arguments are clearly without merit, this court grants the motion on the merits and affirms their judgments and sentences.

Ryan Waslawski had been selling drugs for Meza but decided to stop. He did not tell Meza. Instead, he simply stopped speaking with Meza. On January 9, 2003, Meza called him and asked to meet him for lunch. When Meza picked Waslawski up, Delgado and William Kravis were already in the truck. When Waslawski got in the truck, the others were "dead silent." Report of Proceedings (June 30, 2003) at 26. Meza asked him why he had stopped selling drugs for him. Waslawski replied that he had gotten a job. Meza angrily replied, saying that Waslawski had "disrespected him and treated him like he was a bitch and stuff like that." Report of Proceedings (June 30, 2003) at 28.

Meza pulled the truck onto the freeway. Waslawski said that he had to be at work in one half hour. Meza replied "[y]ou're not going to make it to work." Report of Proceedings (June 30, 2003) at 29. Meza exited the freeway and started driving toward Tenino. He and Waslawski argued. He pulled out a semi-

automatic handgun, loaded rounds in the chamber and set it down again. Meza pulled off the Yelm Highway down a gravel road, but returned to the highway when Delgado pointed out the presence of an old man crossing the road. Meza later pulled off the highway and into a vacant lot.

Meza got out of the truck, armed with the handgun, and told everyone to get out of the truck. He told Waslawski to walk down a trail and to stand in an area free of trees and brush. Waslawski refused to stand where Meza wanted him to. Meza fired his handgun into the air, pointed the gun at him and swore. Waslawski then went where Meza wanted him to go. Meza stood about 10 feet from him, complained again that Waslawski had disrespected him, and then shot Waslawski in the shoulder above the armpit.

Bleeding profusely, Waslawski begged for Meza to take him to a hospital. Meza allowed him back in the truck on condition that Waslawski maintain he had been shot in a drive-by shooting. Meza also threatened to kill Waslawski's mother if he told police the truth. Instead of taking Waslawski to a hospital, Meza dropped him off at a service station. Waslawski was eventually transported to Harborview Hospital, where he was treated for a punctured lung, damage to his aorta and nerve damage.

The State initially charged both Delgado and Meza with attempted murder in the first degree and kidnapping in the first degree.¹ The State amended Delgado's information to charge him with attempted murder in the first degree, or

¹ The State also charged Delgado and Meza with unlawful possession of cocaine and of marijuana, and charged Delgado with unlawful possession of a firearm. Those counts were dismissed prior to trial.

in the alternative, assault in the first degree, and to add a charge of rendering criminal assistance. The State amended Meza's information to add counts of intimidating Waslawski and Kravis. The State alleged that Delgado's and Meza's crimes were committed while they were armed with firearms.

Waslawski testified as described above. Kravis, who had cooperated with the police, testified that before they picked up Waslawski, he thought they were going to lunch until Delgado purchased ammunition and Meza loaded his gun with it. He testified that in the truck, Meza told Waslawski that "he hoped his last meal was good" because "[t]hat is the last one he's going to have." Report of Proceedings (June 30, 2003) at 97. He also testified that after they all got out of the truck, Meza shot Waslawski. He testified that Meza threatened to kill him and his family if he told police what had happened.

Police later recovered two shell casings from the vacant lot and a semi-automatic handgun from a residence where Meza and Delgado had stayed. Forensic testing established that the handgun found in Meza and Delgado's residence fired the shells whose casings were found in the vacant lot.

At the end of the State's case, the court dismissed Delgado's charge of rendering criminal assistance. Delgado and Meza rested without testifying or calling witnesses. The jury convicted Delgado of assault in the first degree instead of attempted murder in the first degree. It also convicted Delgado of kidnapping in the first degree and found that Delgado had committed both crimes while armed with a firearm. The jury convicted Meza of attempted murder in the first degree, kidnapping in the first degree and two counts of intimidating a

witness and found that he had committed all four crimes while armed with a firearm. The court sentenced Delgado to consecutive sentences of 111 months for the assault conviction, 51 months for the kidnapping conviction, and 120 months for the two firearm enhancements, for a total of 288 months. The court sentenced Meza to consecutive sentences of 196 months for the attempted murder conviction, 68 months for the kidnapping conviction, and 192 months for the four firearm enhancements, for a total of 456 months.² Both Delgado and Meza timely appeal.

Delgado's Arguments

First, Delgado argues that the State's amendment of his information violated his right to a speedy trial. He notes that the State filed its initial information on January 9, 2003, but did not amend its information until May 21, 2003, 128 days later. He contends that because the State did not amend its information within the 60-day speedy trial period under CrR 3.3, the amendment violated his right to a speedy trial. *State v. Peterson*, 90 Wn.2d 423, 431 (1978). But on March 6, 2003, Delgado signed a waiver of speedy trial which waived his right to speedy trial until June 30, 2003. An amendment to the information filed before the expiration of such a waiver does not violate the defendant's right to a speedy trial. *State v. Pettus*, 89 Wn. App. 688, 701-02, *review denied*, 136

² The court imposed concurrent sentences for the two counts of intimidating a witness.

Wn.2d 1010 (1998). The amendment of his information did not violate Delgado's right to a speedy trial.

Second, Delgado argues that convicting him of both assault in the first degree and kidnapping in the first degree violate his right against double jeopardy. He contends that the kidnapping was incidental to or a part of the assault, such that his conviction for kidnapping constitutes double jeopardy. *State v. Johnson*, 92 Wn.2d 671, 680 (1979), *cert. denied*, 446 U.S. 948 (1980). The *Johnson* court followed the *Blockburger* test, in which convictions for multiple statutory provisions are permissible when "each provision requires proof of a fact which the other does not." *Johnson*, 92 Wn.2d at 679 (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)).

In *Johnson*, a conviction for rape in the first degree required the jury to find that the defendant committed kidnapping or assault in committing the rape. Accordingly, the court held that Johnson could not be convicted of rape and of kidnapping or assault. *Johnson*, 92 Wn.2d at 680. But a conviction for kidnapping in the first degree does not require the jury to find that the defendant committed assault. Nor does a conviction for assault in the first degree require the jury to find that the defendant committed kidnapping. Waslawski's kidnapping was not merely incidental to his assault. Kidnapping in the first degree and assault in the first degree require proof of different elements and different evidence. As Delgado's convictions for kidnapping and assault are not "the same in law and fact," they do not violate his right against double jeopardy.

State v. Calle, 125 Wn.2d 769, 777 (1995) (quoting *State v. Vladovic*, 99 Wn.2d 413, 423 (1983)).

Third, Delgado argues that the superior court erred in instructing the jury because it did not instruct the jury that in order to find that Delgado was armed with a deadly weapon when he committed the kidnapping and the assault, it must find beyond a reasonable doubt that a nexus existed between Delgado, the crimes and the deadly weapon. *State v. Holt*, 119 Wn. App. 712, 728 (2004); *State v. Schelin*, 147 Wn.2d 562, 574 (2002). The State responds that the instructional error is harmless given the uncontroverted evidence of the nexus between Delgado and Meza, the crimes and the deadly weapon. The State is correct. The omission of an element from a jury instruction is harmless error when an omitted element "is supported by uncontroverted evidence." *State v. Brown*, 147 Wn.2d 330, 341 (2002) (citing *Neder v. United States*, 527 U.S. 1, 18 (1999)). The nexus between Delgado and Meza, the crimes and the deadly weapon was uncontroverted. The instructional error is harmless.

Fourth, Delgado argues that he was denied effective assistance of counsel by his counsel's failure to move to dismiss on speedy trial grounds and to object to the erroneous sentencing enhancement jury instructions. In a claim of ineffective assistance of counsel, the defendant must show deficient performance and prejudice. *State v. Hendrickson*, 129 Wn.2d 61, 77-78 (1996). This court presumes that the defendant's trial counsel performed properly. *Hendrickson*, 129 Wn.2d at 77. The defendant also has the burden of showing prejudice. *Hendrickson*, 129 Wn.2d at 78.

As to the failure to move to dismiss on speedy trial grounds, Delgado's counsel performed properly because Delgado had waived his speedy trial rights. As to the failure to object to the sentencing enhancement jury instructions, given that the errors in the instructions are harmless, Delgado fails to show that he was prejudiced. Delgado's claims of ineffective assistance of counsel therefore both fail.

Meza's Arguments

First, Meza argues that the State failed to present sufficient evidence to prove beyond a reasonable doubt that he committed kidnapping in the first degree. The State's evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201 (1992); *State v. Green*, 94 Wn.2d 216, 221 (1980); *State v. Delmarter*, 94 Wn.2d 634, 637 (1980). Credibility determinations are for the trier of fact and not subject to review by this court. *State v. Camarillo*, 115 Wn.2d 60, 71 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, *review denied*, 119 Wn.2d 1011 (1992).

Meza contends that the State presented no evidence that he used force to restrain Waslawski except for the force involved in shooting him, which is the crime of attempted murder, not kidnapping. But the State presented evidence that Meza induced Waslawski to get into the truck under false pretenses, told Waslawski he would not be making it to work, displayed and loaded a handgun in Waslawski's presence, order Waslawski out of the truck, and when Waslawski

refused to stand where Meza told him to, fired the handgun in the air and then pointed it at Waslawski. Taken in the light most favorable to the State, this evidence is sufficient for a rational trier of fact to find that Meza committed kidnapping in the first degree.

Second, Meza argues that the superior court erred in imposing consecutive sentences because it should have treated his convictions for attempted murder in the first degree and for kidnapping in the first degree as parts of the “same criminal conduct” under RCW 9.94A.589(1)(a). Crimes are part of the “same criminal conduct” for sentencing purposes if they “require the same criminal intent, are committed at the same time and place, and involve the same victim.” RCW 9.94A.589(1)(a).

Meza contends that the kidnapping furthered the attempted murder, that his criminal intent did not change between crimes, that he committed his crimes at the same time and place, and that both crimes involved Waslawski. Thus, he contends his crimes were part of the same criminal conduct. *State v. Dunaway*, 109 Wn.2d 207, 215 (1987). The State responds that Meza’s criminal intent changed from scaring Waslawski during the kidnapping to trying to kill him during the attempted murder and that the kidnapping and the attempted murder were not committed at the same time and place. *State v. Lessley*, 118 Wn.2d 773, 778 (1992).

Meza fails to show that his convictions for kidnapping and attempted murder were part of the “same criminal conduct” under RCW 9.94A.589(1)(a). Objectively viewed, the crimes involved different criminal intents. And although

they involved the same victim, the crimes occurred at different times and different places. The superior court did not err in not finding that the crimes were part of the same criminal conduct and so did not err in imposing consecutive sentences under RCW 9.94A.589(1)(b).

Third, Meza argues, as Delgado does, that the superior court erred in instructing the jury because it did not instruct the jury that in order to find that Meza was armed with a deadly weapon when he committed the kidnapping and the assault, it must find beyond a reasonable doubt that a nexus existed between Meza, the crimes and the deadly weapon. But, as addressed above, that error is harmless in light of the uncontroverted evidence of the nexus between Meza, the crimes and the deadly weapon.

Fourth, Meza argues that the superior court erred in allowing Waslawski to testify about prior threats that Meza had made toward him. The court allowed the testimony under ER 404(b) because it was admissible to establish intent, motive and absence of mistake. Meza contends that intent, motive and absence of mistake were not at issue so the court erred in allowing the testimony. *State v. Powell*, 126 Wn.2d 244, 262 (1995); *State v. Ramirez*, 46 Wn. App. 223, 228 (1986).

This court reviews the superior court's ruling to admit evidence under ER 404(b) for an abuse of discretion. *Powell*, 126 Wn.2d at 258; *State v. Dennison*, 115 Wn.2d 609, 628 (1990). Contrary to Meza's contention, the intent behind his shooting of Waslawski is not implicit in his action. The evidence of Meza's prior threats was relevant to whether he was trying to kill Waslawski when he shot

- 30662-0-II and 31710-3-II

him. That evidence was also relevant to his motive behind taking Waslawski to the field and shooting him. Because the superior court had tenable grounds upon which to admit the evidence under ER 404(b), it did not abuse its discretion. *Powell*, 126 Wn.2d at 258.

Fifth, Meza argues that the superior court erred in allowing the State to amend the information with counts of intimidating Waslawski and Kravis. He contends that the amendments prejudiced his right to effective representation. *State v. DeSantiago*, 108 Wn. App. 855, 874 (2001), *aff'd in part, rev'd in part and remanded*, 149 Wn.2d 402 (2003). But he does not demonstrate such prejudice. Meza's trial did not begin until June 30, 2003, a month after the amendment to add the charge of intimidating Waslawski. The charges of intimidating both Waslawski and Kravis arose out of Meza's conduct during the kidnapping of Waslawski. No further investigation was needed. The amendments did not prejudice Meza's right to effective assistance of counsel.

Meza's Statement of Additional Grounds

First, Meza claims that the evidence was insufficient for the jury to find that he had attempted to murder Waslawski. He contends that because he only shot Waslawski once, forwent the opportunity to shoot him more times to assure his death, and took Waslawski from the scene so he could obtain help, he could not have intended to kill Waslawski. The question of whether Meza attempted to murder Waslawski or to merely assault him is one of credibility for the jury and is one that this court does not review on appeal. *Camarillo*, 115 Wn.2d at 71.

Second, Meza claims that the prosecutor committed misconduct when he argued that Meza had shot Waslawski in the chest, damaging his lung and aorta. He contends that the evidence showed that he shot Waslawski in the shoulder, not the chest. He further contends that no medical evidence established Waslawski's injuries. Meza is mistaken on both counts. Waslawski testified to the injuries he received from Meza's shot. The lung and the aorta are within the chest, not the shoulder. The prosecutor's argument was within the evidence and was not misconduct.

Third, Meza claims that the multiple consecutive sentence enhancements the superior court imposed for being armed with a firearm during his four crimes violate his right against double jeopardy. They do not. In *State v. Husted*, 118 Wn. App. 92, 95-96 (2003), *review denied*, 151 Wn.2d 1014 (2004), the court held that the Legislature had clearly and unambiguously provided for multiple punishments, including multiple consecutive punishments, where a person commits more than one crime while armed with a deadly weapon. Meza's multiple consecutive sentence enhancements, imposed under RCW 9.94A.533(4), do not violate his right against double jeopardy. *Husted*, 118 Wn. App. at 96.³ Meza's attempts to factually distinguish *Husted* fail.

Conclusion

Delgado's and Meza's arguments are clearly without merit. RAP 18.14(e)(1). Accordingly, it is hereby

³ Interpreting former RCW 9.94A.510(4)(e) (2000).

ORDERED that Delgado's and Meza's judgments and sentences are affirmed. They are hereby notified that failure to move to modify this ruling terminates appellate review. *State v. Rolax*, 104 Wn.2d 129, 135-36 (1985).

DATED this 3rd day of December, 2004.

Eric B. Schmidt

Eric B. Schmidt
Court Commissioner

cc: Thomas Edward Doyle
Patricia A. Pethick
Samuel G. Meyer
Steven C. Sherman
Hon. Daniel J. Berschauer
Thurston County Superior Court
Cause numbers: 03-1-00051-9 and 03-1-00052-7
Indeterminate Sentence Review Board
Christopher Delgado
Ernesto Meza

NO. 35455-1-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
Respondent)	DECLARATION OF
)	MAILING
v.)	
)	
CHRISTOPHER DELGADO AND)	
ERNESTO MEZA,)	
Petitioners)	

COURT OF APPEALS
DIVISION II
07 JAN 23 PM 1:56
STATE OF WASHINGTON
BY CR
DEPUTY

STATE OF WASHINGTON)	
)	ss.
COUNTY OF THURSTON)	

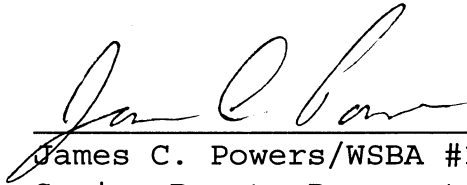
James C. Powers declares and affirms:

I am a Senior Deputy Prosecuting Attorney in the
Office of Prosecuting Attorney of Thurston
County; that on the 22nd day of January, 2007, I
caused to be mailed to the attorney for the
Petitioners, SUZANNE LEE ELLIOTT, a copy of the
Respondent's Response to Personal Restraint
Petition, addressing said envelope as follows:

Suzanne Lee Elliott
Suite 1300 Hoge Building
705 Second Avenue
Seattle, WA 98104

I certify (or declare) under penalty of perjury
under the laws of the State of Washington that
the foregoing is true and correct to the best of
my knowledge.

DATED this 22nd day of January, 2007 at Olympia,
WA.

A handwritten signature in cursive script, appearing to read "James C. Powers", is written over a horizontal line.

James C. Powers/WSBA #12791
Senior Deputy Prosecuting Attorney